

ENTERED

August 11, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION****MARK CLIFF SCHWARZER,**
Plaintiff,**v.****DALE WAINRIGHT; ROBERT**
BEARD; PAMELA MENDEZ-BANDA;
BRYAN COLLIER; and JENNIFER
SMITH,
Defendants.§
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§**Civil Action No. 6:18-cv-34****ORDER**

This matter is before the Court on remand from the Fifth Circuit Court of Appeals to determine the timeliness of Plaintiff Mark Cliff Schwarzer's ("Schwarzer") Motion to Alter Judgment under Rule 59(e) of the Federal Rules of Civil Procedure. (*See* Dkt. Nos. 17, 24). His motion is timely if he placed it in the prison mail system on or before October 30, 2019.

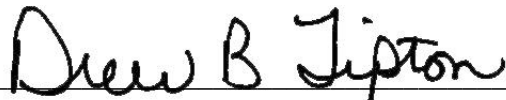
The Court ordered briefing to determine whether Schwarzer timely filed his motion pursuant to the prison mailbox rule. (Dkt. No. 28). Complying with the Court's Order, Schwarzer filed a sworn affidavit stating that he dropped his motion in the prison mailbox on October 30, 2019; however, because mail placed in the prison mailing system is processed and recorded in the mail log *on the next business day*, his motion was recorded on the mail log as "received" by the mailroom on October 31, 2019. (Dkt. No. 29). The Texas Attorney General, as *amicus curiae*, has acknowledged that "[m]ail

received after hours is processed the next day and therefore the mail log is consistent with Mr. Schwarzer's claim he placed his motion in the mail on October 30, 2019." (Dkt. No. 32 at 2).

Based upon the aforementioned evidence, the Court **FINDS** that Schwarzer timely deposited his Rule 59(e) motion to alter judgment in the prison mailbox on October 30, 2019.

It is so ORDERED.

Signed on August 11, 2021.


DREW B. TIPTON
UNITED STATES DISTRICT JUDGE